Reserved Judgement

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (M/S) No. 1375 of 2004
(Under Art. 227 of the Constitution of India)

Bhagwan Das S/O Sri Budh Singh through Sri H.S.Jauhri
R/O A-50, Shiwalik Nagar, B.H.E.L. Hardwar.

… **Petitioner.**

Versus

1. Presiding Officer, Labour Court, Dehradun.
2. Irrigation Research Institute, Roorkee, Haridwar Through its Director.

….. **Respondents.**

Sri Pankaj Miglani, Advocate, learned counsel for the Petitioner.
Sri Nand Prasad, Learned Standing Counsel for the respondents.

Date March 21, 2006

(Hon'ble B.S. Verma, J.)

By means of this writ petition, the petitioner has sought order or direction of this Court for setting aside the impugned order dated 23.10.1996 passed by the respondent no.1 whereby the termination of service of the petitioner by the employer w.e.f. 4-6-1992 was held to be legal and proper. It was held that the petitioner had not completed 240 days in the calendar year preceding the termination of his service.

2. Brief facts giving rise to this writ petition are that the petitioner worked under the employment of respondent no. 2 as mason on muster roll as daily wager at Bahadarabad laboratory since the year 1972. on 4-6-1992, the petitioner was removed from service illegally without any prior notice in violation of the provisions of Section 6(N) of the U.P. Industrial Disputes Act, 1947 ***(for short the Act)***. Aggrieved, the petitioner raised the industrial dispute, which was referred in the following terms:-

"Whether the termination of service of labour Sri Bhagwan Das W/O Sri Buddh Singh by the employers from 4-6-92 is justified and/or legal? If no, to which benefit/relief the concerned workman is entitled and to what extent?"

3. Notice was issued to the employer, who filed its written statement alleging therein that the petitioner had not completed the period of 240 days in either of the calendar years 1990 to 1992, therefore, the claim of the petitioner was not maintainable. The petitioner filed replication and stated that the employers have not properly reckoned the working days and that the petitioner had worked for more than 240 days. The learned Labour Court after considering the entire material on record came to the conclusion that the workman/petitioner had not worked for 240 days in any calendar year, therefore, by the impugned order dated 23-10-1996, it was held that the termination of his services by the employer was legal and valid. Feeling aggrieved, the petitioner has come up in the writ petition.

4. I have heard the learned counsel for the parties and carefully perused the entire material on record.

5. Learned counsel for the petitioner has relied upon the U.P. Government Notification, Labour Department, Section-3 No. 1335/36-3-8 (M.W.)/89 dated July 11, 1990 issued under the Minimum Wages Act, which is also applicable in Uttaranchal Sate in view of U.P. Reorgnization Act, 2000. It was submitted that the petitioner is also covered under that Notification under the Minimum Wages Act and according to this Notification, he is entitled for inclusion of Sundays for payment of wages for the entire period of one month. It is evident from the said Notification that Irrigation Department and its workmen are fully covered by the Notification aforesaid.

6. Learned Labour Court recorded a finding that the workman had not worked for 240 days in any calendar year and

hence the termination order was legal and justified. A bare perusal of the impugned order reveals that the learned Labour court only considered 186 working days along with 30 weekly holidays with a total of 216 days. An important aspect of this case is that the Labour Court itself found that there was variation between the working days as mentioned by the employer in its written statement and the working days mentioned in the statement filed by the employer. The learned Labour Court after placing reliance on the witness of employer came to the conclusion that the workman had worked for a total of 216 days in the preceding calendar year, which included 30 weekly holidays. The learned Labour Court did not consider that not only the working days but also the national holidays as well as Sundays are also to be calculated while computing the continuous period of 240 days. In the case of ***H.D.Singh Vs. Reserve Bank of India and others [AIR 1986, Supreme Court, 132],*** in calculating the total number of working days on which the workman had worked during the calendar year, besides the actual working days, 52 Sundays and 17 holidays are to be added. After adding 52 + 17 = 69 holidays to 186 days, total days of continuous service rendered by the workman/petitioner thus comes to 255 days, which is more than 240 days. In the case of ***"Workmen of American Express International Banking Corporation V. Management A.E.I.B. Corpn." (AIR 1986 Supreme Court, 458)*** it has been observed by the Apex Court that in assessing continuous service of a workman, while calculating actual working days, Sundays and other paid holidays can be taken into account. Thus it comes out that the petitioner had completed 240 days and as such he is entitled to the benefits of provisions of Section 6-N of the Act. Moreover, the learned Labour Court did not consider the fact that as per Section 2(g) of the Act, the continuous service of 240 days is to be calculated for 12 preceding calendar months for getting the benefits of Section 6(N) of the Act. The Hon'ble Supreme Court in the case of ***"U.P. Drugs & Pharmaceuticals Co. Ltd., Vs. Ramanuj Yadav and others***

[(2003) 8 Supreme Court Cases, 334] has held that ***"if a workman has worked for more than 240 days in earlier years, then even though during the year of his retrenchment he has not worked for 240 days, he would be deemed to be in continuous service and his retrenchment would be violative of Section 6-N r/w Sec. 2(g) of Industrial Disputes Act, 1947."***

7. In view of the aforesaid verdict of the Apex Court and discussion aforementioned, it is clear that the petitioner workman had completed continuous service of more than 240 days. The finding of the learned Labour Court that the workman had not worked for 240 days is erroneous and the impugned order cannot be sustained in the eye of law and is hereby quashed accordingly. The workman shall be reinstated in service but he shall not be paid any back wages.

8. The writ petition is partly allowed. The workman shall be reinstated in the services in the services but he shall not be paid any back wages. No order as to costs.

(B.S. Verma, J.)

RCP